

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

In re Patent Application of:

Allon Engliman

Confirmation No. 2996

Application No. 10/077,667

Art Unit: 3714

Filed: February 15, 2002

Examiner: Ryan Hsu

For: Gaming Machine With Block Wagering

Customer No. 70243

Mail Stop Appeal Brief – Patents (via EFS-Web)

Commissioner for Patents

Alexandria, Virginia 22313-1450

SUPPLEMENTAL REPLY BRIEF PURSUANT TO 37 C.F.R. § 41.37

Dear Commissioner:

This Supplemental Reply Brief is responsive to the Supplemental Examiner's Answer, mailed on October 5, 2009, in the Appellant's appeal to the Board of Patent Appeals and Interferences from the final rejection of claims 1-7, 9-15, 17-18, 25-31, 33, 35, 37-39, and 41-52 in the above-referenced application. Relative to the initial Examiner's Answer, the Supplemental Examiner's Answer simply added a statement on the Section 103 rejections for dependent claims 18 and 42.

This Supplemental Reply Brief supplements the arguments presented in the Appeal Brief filed by the Appellant on February 23, 2009 and the Amended Appeal Brief filed by the Appellant on April 17, 2009. This Supplemental Reply Brief presents the same arguments as the Reply Brief dated October 6, 2009.

I. THE EXAMINER'S ANSWER NOW APPEARS TO AGREE THAT OSAWA DOES NOT EXPLICITLY TEACH RESETTING THE ACCUMULATION FEATURE AT THE START OF THE GAME

Independent claims 1 and 25 require that “the accumulation feature is *reset* to include no accumulated game-play elements *prior to each purchased series of plays*.” Similarly, independent claims 48 and 51 require “*resetting* the accumulation feature to include no accumulated game-play elements *prior to the next purchased series of plays*.”

When attempting to find this claim element in Osawa, the Final Office Action stated:

Furthermore, Osawa's accumulation feature provides the player with a second award to a player in response to a predetermined condition being met, *the accumulation feature is reset to include no game play accumulated elements at the start of a player entering into the game.*

Ex. B, Final Office Action, p. 3. In its Reply to the Final Office Action dated October 21, 2008 and in its Appeal Brief, Appellant argued that the highlighted portion of this quotation is an inaccurate reading of Osawa in that Osawa fails to teach the aforementioned claim elements of independent claims 1, 25, 48, and 51. As clearly demonstrated by Osawa's FIG. 5, the reset operation *only* occurs when the secondary game causes an award to be awarded to the player, as shown in steps ST12 and ST13 of FIG. 5.

In the Examiner's Answer, the Examiner now appears to agree with the Appellant that Osawa does not explicitly teach that his “*accumulation feature is reset to include no game play accumulated elements at the start of a player entering into the game,*” as was the basis for the rejection in the Final Office Action. Rather, the Examiner's Answer now argues that resetting at “the predetermined condition” could mean that the resetting operation could occur before the start of a player entering the game (i.e., the start of the game could be “the predetermined condition.”) Examiner's Answer, p. 8. Additionally, the Examiner's Answer also now argues that Osawa's supposed teaching of a player-initiated reset operation is an alternative teaching for concluding that Osawa teaches the resetting operation at the start of the game. Examiner's

Answer, p. 8. As explained in the sections below, Appellant respectfully suggests that both of these alternatives are based on an improper reading of Osawa.

A. OSAWA CLEARLY TEACHES WHAT IS MEANT BY “THE PREDETERMINED CONDITION”

The Examiner’s Answer relies upon Column 4, lines 5-28 in Osawa for its assertion that “the predetermined condition” could be the start of the game. However, Osawa clearly teaches what he means with reference to “the predetermined condition” in the paragraphs at the bottom of column 3 and the top of column 4. Specifically, those paragraphs teach the following:

In a further embodiment it is determined that a player can earn a profit or receive an award when the information displayed on the secondary display screen satisfies *a predetermined condition. The predetermined condition includes, for example, completion of the secondary game, as would be the case when any of the display areas is shown as being filled with successive symbol images.* Such a filling of a display area constitutes, in this specific illustrative embodiment of the invention, a win of the secondary game. In this embodiment, the player can enjoy the secondary game like a “race game” in which the accumulation of the respective symbol images compete to reach right-hand terminals of each display areas, which are each assumed to be a goal. The secondary game has an aspect of a “race game,” as mentioned above, and additionally provides an indication of the history of appearance of the predetermined states of the primary game, as mentioned above. The player can easily recognize what kind of the predetermined state furthers the likelihood of winning or losing the secondary game by observing the area or number of the symbol image indicated.

...

In a preferred embodiment, the controller executes a reset operation of the secondary display screen when the secondary screen indicates that the predetermined condition has been satisfied. In a single area clearing system, a display area filled with symbol images is cleared to a blank condition in response to the execution of the reset operation. In an all areas clear system, all of the display areas are cleared to a blank condition in response to the execution of the reset operation. In an optional selection system, the controller is arranged to select between a reset operation for clearing to a blank condition only a single display area containing symbol images or a reset operation for clearing to a blank condition all of the display areas.

Osawa, Col. 3, line 43 to Col. 4 line 17. The underlined sentence in the last paragraph is the one the Examiner's Answer relies upon for its new argument. However, when reading the few paragraphs preceding the paragraph relied upon for the rejection, Osawa clearly explains what he meant by "the predetermined condition" in Column 4, line 7 (which is the basis for the Examiner's rejection). "The predetermined condition" is a condition in which the player has won the secondary award because the display area is filled with symbols. That teaching is also 100% consistent with FIG. 5, which shows the reset function at step ST13 after the player has been awarded money for the win in step ST12.

There is *absolutely no* suggestion in Osawa that "the predetermined condition" could also be at the start of a wagering game, such as in steps ST1 or ST2 in FIG. 5. Accordingly, when read in its entirety, Osawa does not support the contention of the Examiner's Answer on page 8 that "the predetermined condition" could mean *any time* during a wagering game, including at the start of the wagering game. Rather, it supports the Appellant's position that Osawa's reset operation occurs after the secondary award has been provided to the player.

B. OSAWA ONLY TEACHES THAT THE PLAYER'S MANUAL INPUT CAN AFFECT THE TYPE OF RESET OPERATION THAT IS SELECTED – NOT THE *TIMING* OF THE RESET OPERATION, AS NOW SUGGESTED BY THE EXAMINER'S ANSWER

In the Examiner's Answer, it is contended that the *timing* of the reset operation in Osawa is subject to the manual input of a player. Examiner's Answer, p. 8. The Appellant respectfully suggests that this contention is based on an improper reading of Osawa.

The Examiner's Answer cites to the last sentence in the following paragraph to support an assertion that Osawa teaches the player's input can dictate the *timing* of Osawa's reset operation; however, the last sentence of the following paragraph simply teaches how the reset operation (Osawa has at least two reset operations) is *selected*. The entire paragraph is as follows:

As the reset operation, there are provided two kinds of reset operations, specifically a "one area clear system" (referring to FIG. 10,

detail will be described later) by which only the display area filled with the symbol images is cleared from the symbol images to blank, and an "all areas clear system" (referring to FIG. 11, detail will be described later) by which all of the display areas are cleared from the symbol images to blank. CPU 21 executes the reset operation by *selecting one system from these two systems according to random number sampling*. Of course, the execution of the reset operation may be limited to one of both systems. Also, there may be provided a manually operable member for selecting a reset operation by a player's operation.

Col. 10, lines 17-31. The underlined sentence is the one in question. And, when read in context, it only indicates that the *selection* of the type of reset operation can occur via a manual input from the player. In other words, the player's manual input could affect which reset operation is selected, as an alternative to the random selection by the CPU 21. For example, after winning Osawa's secondary game, the display screen could simply display two or more "shells" each of which is hiding a certain reset operation (e.g., "all areas clear system," "one area clear system," etc) and the manual input from the player in selecting the shell (thereby revealing the associated reset operation) dictates which reset operation will apply at step ST13 in FIG. 5. Or, perhaps the player actuates a reel that spins to determine which reset operation is selected. This is not unusual -- it is well known to permit player input (e.g., pull of a lever) to assist with conducting a random selection in wagering games.

Moreover, the reliance on the last underlined sentence in the aforementioned highlighted paragraph to develop the rejection also ignores Osawa's previous paragraph at Col. 10, lines 13-16, which states, "After completion of coin pay out operation of ST12, *CPU 21 executes a reset operation* of symbol image display portion 6a (ST13) for a game to be played next." In other words, the CPU 21 performs the reset function. The purpose of the aforementioned highlighted paragraph is simply to teach that there can be two different types of reset operations and, if that is the case, the CPU 21 "selects" the reset operation or the player may have some involvement by manual inputs to "select" the reset operation.

In summary, considering that Osawa introduces the CPU 21 for executing the reset operation and then states the CPU 21 is also the component for “selecting” one of the two reset operations, the subsequent sentence regarding the possibility of manual input from a player “for selecting a reset operation” must be construed consistently. The player’s input is only involved in selecting which of the two reset operations is to be executed by the CPU 21. *Contrary to the Examiner’s Answer, this sentence does not teach that the player can select a reset operation to be executed at any time, such as at the start of a wagering game.*

And while the Appellant believes that the last sentence in the aforementioned paragraph can only be reasonably interpreted to be one in which the player’s manual input determines which *type* of reset operation is selected for being executed at step ST13 in FIG. 5, the Appellant further notes that it would defy logic to interpret this sentence in the manner suggested by the Examiner’s Answer. Without question, Osawa’s reset operations are *completely undesirable* to the player. It diminishes the player’s ability to achieve a winning scenario, as mentioned throughout Osawa, such as in Column 11, 35-62, which describes the differences between the “one area clear system” and the “all areas clear system” (e.g., “However, as shown in FIG. 11, after the reset operation in accordance with the “all areas clear system” the player is *discouraged* by the instant disappearance of all symbol images previously indicated.”). If the reset operation is an undesirable event to the player, why would Osawa’s game permit the player to select *the timing* of a reset operation, as the Examiner’s Answer now suggests? Stated differently, what would cause a player to purposely select the reset operation when it has a negative impact on his or her ability to win the secondary award? In summary, it simply would make no sense to have a reset operation in which the timing of that reset operation was totally in the hands of the player because he or she would *never* choose to reset the game. This is yet another reason why the interpretation of this sentence in question suggested by the Examiner’s Answer is incorrect.

Finally, considering that the entire teaching of Osawa is focused on the reset function occurring after the awarding of the secondary prize in step ST13, if the aforementioned sentence were to be interpreted (as the Examiner's Answer now suggests) as offering the player the option to perform the reset operation *at any time*, Osawa would have surely provided more information about how this substantially different reset operation would work. It would change the entire operation of Osawa's game. Yet, there is no other similar teaching or explanation of this manual operation in Osawa. This is yet another reason why the Appellant's interpretation of this sentence is reasonable and consistent with the manner in which a skilled artisan would interpret this sentence. The skilled artisan would not interpret that sentence in accordance with the Examiner's Answer.

C. THE EXAMINER'S NEW CONTENTION OF THE RESET FEATURE BEING "OLD AND WELL-KNOWN" AND ENTAILS ONLY AN "OBVIOUS MATTER OF DESIGN CHOICE" IS UNSUPPORTED

Finally, the only other basis in which the Examiner's Answer finds support for its contention that Osawa teaches resetting an accumulation feature *at the start* of the wagering game is a new argument. The reasoning of the Examiner's Answer appears to be that, even if Osawa does not teach that his accumulation feature undergoes the reset operation *at the start* of the wagering game, it still would be obvious to do so. Specifically, after discussing the "predetermined condition" position and the "player-initiated reset" position, mentioned above, the Examiner's Answer then concludes with the following point:

Providing a reset before the play of a game when a user has changed *is old and well-known* in the gaming arts and produces the expected result of preventing a subsequent user from unfairly continuing the game play of another. The teachings of Osawa and its adaptable reset system in combination with an *obvious matter of design choice* would have produced the expected result of providing each player with the accumulation independent of those to have previously played the game machine. Therefore it would have been obvious to one of ordinary skill in

the art to incorporate the predetermined function of a reset feature at the beginning of the series of plays by player.

Examiner's Answer, p. 8. Several things are noteworthy about the statement. First, it is really a new obviousness rejection because the previous rejection was based on the assertion that Osawa explicitly taught an accumulation feature that was reset to include no game play accumulated elements *at the start of a player entering into the game* (which is not the case). Second, it completely ignores the fact that the claimed invention is not simply an accumulation feature. The claimed invention generally relates to a wagering game that includes a *block wagering function*, which has an accumulation feature that includes a certain reset function. And third, there is simply no basis for these arguments that the claimed type of "reset operation" in the accumulation feature of the claimed block wagering function is "old and well-known" or entails only an "obvious matter of design choice" in light of Osawa. In short, these new arguments lack support in the record.

In conclusion, independent claims 1 and 25 require that "the accumulation feature is *reset* to include no accumulated game-play elements *prior to each purchased series of plays*." Similarly, independent claims 48 and 51 require "*resetting* the accumulation feature to include no accumulated game-play elements *prior to the next purchased series of plays*." A *prima facie* case of obviousness has not been established because these limitations cannot be found in Osawa or Feinberg.

II. THE EXAMINER'S ANSWER IS DEFICIENT IN IDENTIFYING THE "PLAYING THE BONUS GAME" CLAIM ELEMENTS IN THE PRIOR ART

Regarding the claim elements related to the bonus game, independent claim 25 includes the following claim elements.

the accumulation feature (i) *permitting the player to play a bonus game before completing the series of plays* of the basic portion of the wagering game in response to an accumulation of a predetermined number of accumulated elements and (ii) *returning to the basic portion of the game*

to continue playing the series of plays associated with the single wager until the fixed number of plays have been completed.”

And with regard to the bonus game, independent claim 51 states as follows:

before completing the series of plays of the basic portion of wagering game, permitting the player to play a bonus game in response to a predetermined criterion being met for the accumulated element;
after completion of the bonus game, returning to the basic portion of the game to continue playing the series of plays associated with the single wager until the fixed number of plays have been completed;

The Appellant respectfully suggests that a *prima facie* case of obviousness has not been established with regard to these claims because these elements are also not taught in Osawa or Feinberg.

The Examiner’s Answer continues to rely upon steps ST9-ST13 of Osawa’s FIG. 5 for the teaching of these claim elements. Examiner’s Answer, pp. 15-16. While FIG. 5 uses the terminology “secondary game,” it is *not* a secondary game, as claimed. Osawa’s player is not permitted “to play” a secondary game. Nor does Osawa’s player return to the basic game after playing a secondary game. Steps ST9-ST13 are simply the steps by which a symbol in the basic game is added to the display area. If the symbol is added to that display area, that symbol may fill the symbol area so as to provide the secondary award. See Col. 9, lines 61-63 (stating “the display area does not have space for indication of the symbol image any longer”).

In particular, step ST9 determines if a symbol on the reels 4 is one that can be added to the secondary display. If the answer is “yes,” at step ST10, that symbol is then automatically added to the secondary display. Once added, step ST11 automatically determines whether that added symbol fills display area, thereby completing the secondary game. If that symbol fills the display area, then at step ST12, the player automatically receives a payout award. Finally, after the award is provided, the reset operation is executed by the CPU 21 at step ST13.

What is noteworthy about steps ST9-ST13 is that there is *absolutely* no player interaction. In fact, the only player interaction in all of FIG. 5 is the insertion of the coin at step ST1 and the pulling of start lever at step ST2. Hence, at steps ST9-ST13, there is no permitting of a player “to play” a secondary game. In essence, steps ST9-ST13 represent the software algorithm by which there is an award of a payout if a symbol causes the display area to be filled, which would take less than a second to execute. Considering how the words “playing” and “to play” are used in the aforementioned claim elements of independent claims 25 and 51, the Appellant believes that it is an unreasonably broad construction to construe “permitting the player to play a bonus game” so as to encompass a software algorithm in which the CPU 21 of the gaming machine *automatically* displays a certain symbol in the secondary display region and *automatically* provides an award if that symbol fills the display region, *which would likely occur in less than one second of computing time and without any player interaction.*¹ Such an unreasonably broad construction of “permitting the play to a bonus game” would ignore the fundamental purpose of all casino-type gaming machines -- to provide an entertaining gaming experience to the player in exchange for a wager input.

As such, for independent claims 25 and 51, a *prima facie* case of obviousness has not been established because these limitations cannot be found in Osawa or Feinberg.

¹ As stated above, the only other possible player interaction involves the manual input of the player to “select” the reset operation to be executed by the CPU 21 within step ST13. However, any such player interaction would occur after the symbols were displayed (step ST10) and after any associated payout from that accumulation game was provided to the player at step ST12. Therefore, such player interaction could never be categorized as “playing” the game since, at step ST13, that game’s award process has already been completed.

III. THE STATEMENTS IN THE EXAMINER'S ANSWER ABOUT "VULTURING" ARE UNSUPPORTED AND BASED ON AN IMPROPER READING OF OSAWA

On page 9 of the Examiner's Answer, the Examiner attempts to refute the Appellant's argument on pages 9-10 of the Appeal Brief regarding the fact that the claimed invention helps to solve problems related to "vulturing" in accumulation-type wagering games. There are two fundamental problems with the arguments set forth on page 9 of the Examiner's Answer.

First, these positions are based on an improper reading of Osawa in that they make the assumption that "Osawa specifically teaches a manual reset feature is adaptable to be reset *at any point* at the discretion of the game designer and the game user." Examiner's Answer, p. 9. As explained above, the sentence at Col. 10, lines 28-31 of Osawa, on which the Examiner relies, does *not* teach that the player can execute the reset operation at any point in time. Moreover, it is absolutely unclear how "the game designer" would be permitted to execute the reset operation at any point in time while the wagering game is being conducted, as suggested by the Examiner's Answer. Osawa does not mention anything about the game designer choosing the timing of the reset operation.

Second, and more important, the statement that "Osawa does consider the vulturing effect by incorporating a reset operation at the player's discretion" highlights the hindsight reconstruction of the claims that has occurred in developing the current rejections. Examiner's Answer, p. 9. Osawa *never* mentions anything about a "vulturing" problem. The portion of the record mentioning the "vulturing" problem associated with accumulation-type wagering games is the Background Section of Appellant's *own* specification (See paragraph 5). In fact, the Examiner's Answer even goes so far as to say "[t]he idea of vulturing is well known in the gaming arts and made prevalent in the media and modern culture where a player runs out of his/her money and another player comes in right afterwards to place one coin and wins the

jackpot.” Examiner’s Answer, p. 13. The Appellant does not understand the basis for this statement, or how it is supported.

What is particularly noteworthy is that the Examiner’s Answer has (i) latched onto a single sentence in which Osawa teaches that a player’s input could be used to select which of the two reset operations will be executed by the CPU 21, (ii) misconstrued that single sentence to mean the player can execute the reset operation at any time, and (iii) turned that into an argument that Osawa “considered the vulturing effect by incorporating a reset operation at the player’s discretion.” Because Osawa never mentions any “vulturing” problem, that means that the Examiner has learned of the “vulturing” problem through the Appellant’s own disclosure and misinterpreted a sentence in Osawa to develop an argument that Osawa considered the “vulturing” problem and used his “reset operation” to solve it. That is simply not the case. The Appellant respectfully suggests that this reasoning on page 9 of the Examiner’s Answer represents the classic case of a hindsight reconstruction of an invention in which the Applicant’s own specification has been used as a blueprint to develop the rejection.

IV. THE EXAMINER’S ANSWER PRESENTS UNFOUNDED STATEMENTS TO SUPPORT ITS REBUTTAL OF THE APPELLANT’S “TEACHING AWAY” AND “LACK OF MOTIVATION” ARGUMENTS

The Appellant maintains his positions regarding the fact that Feinberg and Osawa teach away from their combination and that the motivation to combine Osawa and Feinberg lacks a “rational underpinning.” *See e.g.*, Appeal Brief, pp. 10-16. From the Appellant’s point of view, the rebuttal in the Examiner’s Answer at pp. 9-14 is, in essence, that excising a first type of wagering technique in a first wagering game and substituting it for a second type of wagering technique in a second (and different) wagering game is a simple and predictable design choice. The Appellant respectfully contends that it is just not that easy. And with regard to these specific

facts, the Appellant respectfully contends that, when considering the *entire* teachings of Osawa and Feinberg, it is just not that easy (and, in fact is improper) to excise Feinberg's wagering feature for his "relatively simple gaming format" within Feinberg's wagering system and substitute Feinberg's wagering feature for Osawa's wagering feature in Osawa's completely different type of wagering game.

In developing its rebuttal, the Examiner's Answer makes the following statement:

The teaching of a wagering method and the implementation of a game method are *mutually exclusive aspects* in the gaming field.

Examiner's Answer, p. 9. Considering the teachings of Osawa and Feinberg, that is quite an overstatement. Feinberg desired a simple gaming format and chose a "fixed cost" wagering technique that fit well with his simple gaming format so that "novice players" were not "quickly fleeced of their money without receiving any entertainment value often resulting in a lack of repeat customers at casinos." Ex. E, Col. 1, lines 16-19. How could Feinberg's relatively simple game method ("you win" or "you lose") be considered to be "mutually exclusive" of his "fixed cost" wagering method? Osawa recognized that "monotonous" games (Ex. D, Col. 1, lines 42-47) caused players to lose interest and a corresponding loss of coin input. So, Osawa developed a wagering game with an accumulation feature "so that the player may play the game with high interest and expectation" (Ex. D, Col. 15, lines 1-13), thereby causing the player to continue to pump coins into the machine, as shown in step ST 1 in FIG. 5. How then could Osawa's accumulation-type, wagering-game method be considered to be "mutually exclusive" of his pay-per-play wagering method? The Appellant respectfully suggests that the Examiner's Answer's statement that "the teaching of a wagering method and the implementation of a game method are mutually exclusive aspects in the gaming field" is an extreme overstatement.

Furthermore, in developing its rebuttal of the Appellant's position that Feinberg's wagering system is focused on simple gaming formats, the Examiner's Answer makes the following statement:

Even in [Feinberg's] described games of "blackjack, roulette, or baccarat," the games themselves still only are provided *with one of two outcomes. Either a player wins or loses.* The cited sections by the appellant's brief construing the aforementioned games as not being able to be used in conjunction with Feinberg has greatly misconstrued the teaching.

Examiner's Answer, p. 10 (emphasis added). This statement fails to take into account the complexity of blackjack, roulette, or baccarat, which Feinberg himself was concerned about. The Examiner is correct in noting that in the aforementioned games, "the player wins or loses." ***But, that is true in every wagering game.*** However, the Examiner is *incorrect* in noting that in the aforementioned games, players "still only are provided with *one of two outcomes.*" In these more complex games, the number of outcomes greatly exceeds two – the player can lose, the player can win \$X, the player can win \$Y, the player could win \$Z, etc. These are all different outcomes which are dictated by the odds of the game and the wager of the player.

Here, the point is that Feinberg had a specific objective -- to maintain a simple gaming format in which the player's decisions are minimal (See *e.g.*, Ex. E., Col 2, lines 38-50, choose odd or even number, choose red or black card, choose head or tails, etc). As the skilled artisan knows, blackjack, roulette, and baccarat have much more complex rules (*e.g.*, what number must the dealer stick on?, can the player "double-down"?, is a higher payment achieved for "blackjack"?, should the player split the hand? should the player play a single number or a group of numbers? should the player bet on a certain color? how does the third-card rule apply?, etc. etc.). For a novice player, the rules of blackjack, roulette, or baccarat can be very difficult rules to follow, which is why Feinberg chose the simple game format that he did. Accordingly, the Appellant believes that the Examiner's Answer is misconstruing the purpose and objective of

Feinberg's wagering game and its associated "fixed cost" wagering technique. And if that is the case, then the *entire* teaching of Feinberg is not being considered in making this obviousness rejection. That, of course, is legally impermissible – Feinberg's *entire* teaching must be considered.

Lastly, the Examiner's Answer relies upon the previously mentioned improper interpretation of Osawa's reset operation to rebut the Appellant's position. For example, the Examiner's Answer argues the following in rebutting the Appellant's argument that there is no "rational underpinning" for combining Feinberg with Osawa:

Additionally, the appellant argues that Osawa teaches away from the instant invention because Osawa resets after the accumulated feature reaches a certain threshold. The Examiner respectfully disagrees. *Osawa teaches a reset feature that allows the ability for a player or the system administrator to reset the accumulated feature at any time.*

Examiner's Answer, p. 12 (emphasis added). Later, the Examiner's Answer states the following with regard to the reset feature in Osawa:

The appellant further contends that Osawa is driven by the need for a player to continually enter in credits and coins and that the reset of the accumulation feature "only" occurs when the secondary award has been achieved. *Such a characterization is clearly erroneous as the section above clearly shows that Osawa allows the manual reset of the accumulation feature (see col. 10: ln 18-45).* As such, the prior art of Osawa is fully capable of performing the resetting operations argued by the appellant and therefore does not overcome the teachings of the prior art of record.

Examiner's Answer, p. 13 (emphasis added). As noted above, Osawa does *not* teach that the player can execute the reset operation *at any time*. Hence, the Examiner's Answer is again relying on an improper reading of Osawa to rebut the Appellant's arguments that the alleged motivation to combine Osawa and Feinberg lacks a "rational underpinning."

V. CONCLUSION

For at least the reasons set forth above and previously submitted in the Appellant's Appeal Brief and Amended Appeal Brief, the Appellant respectfully submits that the final rejection of claims 1-7, 9-15, 17-18, 25-31, 33, 35, 37-39, and 41-52 set forth in the Final Office Action mailed July 21, 2008, should be reversed.

It is believed that no fees are presently due. However, should any fees be required, the Commissioner is authorized to deduct the fees (except for payment of the issue fee) from Nixon Peabody LLP Deposit Account No. 50-4181, Order No. 247079-000127USPT.

Respectfully submitted,

Date: October 13, 2009

By: /Daniel J. Burnham – Reg. No. 39,618/
Daniel J. Burnham

NIXON PEABODY LLP
300 S. Riverside Plaza, 16th Floor
Chicago, IL 60606-6613
Direct : (312) 425-8513

ATTORNEY FOR APPELLANT